



CHIEF OF THE NATIONAL GUARD BUREAU INSTRUCTION

NGB-J1
DISTRIBUTION: A

CNGBI 1400.25 Vol. 431
20 January 2022

NATIONAL GUARD TECHNICIAN AND CIVILIAN PERSONNEL PERFORMANCE MANAGEMENT AND APPRAISAL PROGRAM

References: See Enclosure H.

1. Purpose.

a. Instruction. This instruction is composed of several volumes, each containing its own purpose. The purpose of the overall instruction is to establish policy and assign responsibilities for the National Guard Bureau (NGB) Technician and Civilian Personnel Policy Division (NGB-J1-TCP) in accordance with (IAW) references a through d.

b. Volume. This volume provides policy and assigns responsibilities for the National Guard (NG) Technician and Civilian Personnel Performance Management and Appraisal Program IAW references e through p. Use this volume in conjunction with reference e.

2. Cancellation. This instruction cancels and replaces its previous version, Chief of the National Guard Bureau (CNGB) Instruction 1400.25 Vol. 431, 24 January 2018, "National Guard Technician Performance Appraisal Program."

3. Applicability. This instruction:

a. Applies to the NG of the States, Territories, and District of Columbia, hereafter referred to collectively as "States," and to all NG employees. The term "NG employees" throughout this instruction is defined IAW references a, b, and c as Title 32 Military Technician (Dual Status) excepted service employees and Title 5 NG excepted or competitive service employees within the States.

b. Does not apply to the civilian employees of the Office of the Chief of the National Guard Bureau, National Guard Bureau Joint Staff, Air National Guard Directorate, Army National Guard Directorate, Directorate of Space Operations, and NG employees on a time limited appointment.

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4. Policy. It is National Guard Bureau (NGB) policy that the NG Technician and Civilian Personnel Performance Management and Appraisal Program is a fair and transparent process that links individual employee performance with organizational goals. NG employees who perform at the “fully successful” level or higher are eligible for performance-based personnel actions.

a. Supervisors complete performance management actions IAW reference e. Applicable employees must receive, at minimum, a plan, progress review, and appraisal for each appraisal period. Supervisors address unacceptable performance immediately IAW Enclosure D and E. Performance is generally separate from conduct, unless the conduct affects the performance of the duties of the position.

b. Reconsiderations for a rating of record are processed IAW Enclosure F.

5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This instruction has been revised extensively. Users are encouraged to read the entire document.

8. Releasability. This instruction is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.

9. Effective Date. This notice is effective upon publication and must be revised, reissued, cancelled, or certified as current every five years.



ERIC K LITTLE
Major General, USA
Director, Manpower and Personnel
National Guard Bureau

Enclosures:

- A -- Responsibilities
- B -- Staff Functions
- C -- Specially-Situated Employees
- D -- Addressing Unacceptable Performance
- E -- Personnel Actions Based on Failure to Demonstrate Acceptable Level of Performance upon Completion of a Performance Improvement Period
- F -- Request for Reconsideration
- G -- Within-Grade Increase Eligibility
- H -- References
- GL -- Glossary

ENCLOSURE A
RESPONSIBILITIES

1. Director of Manpower and Personnel (NGB-J1). The Director of NGB-J1 will:
 - a. Maintain oversight of the NG Technician and Civilian Personnel Performance Management and Appraisal Program policy.
 - b. Ensure the NG Technician and Civilian Personnel Performance Management and Appraisal Program is executed in a non-discriminatory manner.
2. Chief of NGB-J1-TCP. The Chief of NGB-J1-TCP will:
 - a. Advise the Director of NGB-J1 on the proper execution of the NG Technician and Civilian Personnel Performance Management and Appraisal Program.
 - b. Oversee the execution of the NG Technician and Civilian Personnel Performance Management and Appraisal Program.
 - c. Report to the Director of NGB-J1 on State overdue appraisal management as requested.
3. Chief of Labor and Employee Relations (NGB-J1-TCPL). The Chief of NGB-J1-TCPL will:
 - a. Grant, when appropriate, super-user performance system access to State-level HR specialists.
 - b. Conduct training for State-level HR specialists on policy and systems related to performance management and appraisals.
4. The Adjutants General (TAGs) and the Commanding General of the District of Columbia (CG). TAGs and the CG will:
 - a. Direct the execution of the NG Technician and Civilian Personnel Performance Management and Appraisal Program IAW reference e and this volume.
 - b. Establish State policy on requests for reconsideration of ratings of record.
 - c. Direct employees and assign work through the establishment of performance plans.
 - d. Establish a minimum period a Rating Official (RO) can supervise an NG employee before a rating may be accomplished, if necessary.

ENCLOSURE B
STAFF FUNCTIONS

1. Explanation of Staff Functions. Positions identified below are appointed and administered by TAG or CG. It is understood that TAG and CG maintain authority to assign work to their staff. Therefore, the personnel chosen for the assignment of these functions may be determined by TAG or CG. The below indicate suggested assignments.

2. Human Resources Officers (HROs). HROs:

- a. Advise TAG or CG on performance management and appraisal policy.
- b. Implement performance management and appraisal policy IAW this volume.
- c. Report to NGB-J1-TCPL on overdue appraisals, as requested.
- d. Provide for education and training for assigned NG employees, military and civilian supervisors, and managers to promote a better understanding of performance management statutes, regulations, and policies.
- e. Develop State policy on reconsiderations of ratings of record.

3. Human Resources (HR) Specialists (Employee Relations). HR Specialists (Employee Relations):

- a. Execute education and training for assigned NG employees, military and civilian supervisors, and managers to promote a better understanding of performance management statutes, regulations, and policies.
- b. Report to the HRO on organizations in the State that are successful or unsuccessful at meeting the standard.
- c. Provide advisory services to supervisors regarding performance management and appraisals ensuring compliance with this volume.
- d. Advise supervisors or proposing officials on the differences between unacceptable performance and conduct actions.

4. HR Specialists (Labor Relations). HR Specialists (Labor Relations):

- a. Exclude, whenever reasonable, decisions to remove employees due to unacceptable performance from negotiated grievance procedures.
- b. Facilitate, when applicable, the negotiation of the exclusion of a requirement to remove employees for unacceptable performance instead of conduct.

- 5. Supervisors (ROs). ROs:
 - a. Plan, review, evaluate, and rate each eligible employee IAW this volume.
 - b. Document performance management actions in the DoD approved system.
 - c. Address poor performance immediately IAW Enclosure D.
 - d. Consider if an unacceptable performance personnel action for an employee could be more appropriately processed under conduct rules.

- 6. Supervisors (Higher Level Reviewers). Higher Level Reviewers (HLRs):
 - a. Ensure ROs timely completion of performance management actions.
 - b. Ensure ROs are consistent and equitable in rating employees across their level of the organization, especially when multiple ROs supervise employees with like critical elements.
 - c. Ensure ROs who are NG employees and eligible for a rating of record are rated based on their required performance elements. Table 1 lists supervisor performance element components that must be included in the RO performance plan in one or more critical elements.

| Performance Element |
|---|
| Equal Employment Opportunity Or Equal Opportunity |
| Whistleblower Protections |
| Prohibited Personnel Practices |
| Performance Management Actions |

Table 1. Required Rating Official Performance Element Components

- 7. NG Employees. NG employees should attempt to understand performance elements and the standard of those elements directed in the Performance Plan.

ENCLOSURE C

SPECIALLY-SITUATED EMPLOYEES

1. Specially-Situated Employees. NG employees have unique situations that require special performance management actions to ensure compliance with statute, regulation and policy. The following procedure should be applied for each situation outlined in this enclosure.

a. Specially-situated employees listed below may have more than one appraisal in an appraisal period, but the appraisal periods and effective dates will not overlap.

b. The start date of an appraisal period should be the first day the employee is in a duty status after the previous appraisal period end date.

c. The effective date of an appraisal for a shortened appraisal period is the later of, the date the appraisal is approved or the end date of the appraisal period.

2. NG Employees Absent for Uniformed Service (Absent-US) or Leave Without Pay. NG employees who are Absent-US or Leave Without Pay and have a minimum of 90 calendar days performing duties in an approved plan during a rating year must be rated. The rating official may change the end date to the last day the employee was in a duty status, but the effective date remains 01 June. At the end of a rating year, if an employee has less than 90 days performing duties under an approved plan no rating should be accomplished. Generally, approved performance documents are closed because employees are considered ineligible.

3. NG Employees Returning to Duty from Extended Absent-US. NG employees who have extended periods of Absent-US that causes one or more appraisal period of ineligibility may, at supervisor discretion, receive a shortened appraisal period to ensure eligibility for personnel actions. This shortened period is a minimum of 90 calendar days under an approved plan.

4. When the Supervisory and NG Employee Relationship Changes. Personnel actions cause changes to employee and RO relationships during the appraisal period. A performance plan is a flexible document that may be changed during the appraisal period. A performance plan may be changed due to reassignments, changes to lower grade, promotions, new appointments, separations, or changes to duty status of either the employee or the RO.

a. Plans that are changed during the appraisal period must be re-approved.

b. This volume does not require a minimum period of supervision to rate an employee. State policy may require no more than 90 days of supervision over the rated employee before a rating is accomplished.

c. There is no minimum period of HLR relationship required to approve performance documents.

d. Performance narratives and appraisals must be completed IAW section 3.8 of reference e.

5. Ratings of Record for Veterans. The rating of record for a disabled veteran will not be lowered because the veteran has been absent from work to seek medical treatment for the rated disability IAW section 208 of reference f. This includes Veterans whose preference is not recorded on personnel actions due to exclusions IAW reference b.

6. Employees Who Have Failed to Successfully Complete a Performance Improvement Plan (PIP). Employees who fail to improve to an acceptable level upon completion of a PIP will be issued a rating of record of 1 at the conclusion of the PIP as long as the PIP is in relation to a performance plan that has been in place for a minimum of 90 calendar days.

7. Employees Who Request Reconsideration Upon Issuance of a PIP. An employee may request reconsideration of a rating of record upon receipt of a PIP subject to State policy. Reconsideration is of the appraisal process and not the PIP. When this occurs both the PIP and reconsideration process will continue concurrently. However, the reconsideration must be approved or denied by the Approval Authority prior to the determination of successful performance or failure of the PIP.

8. Performance Documents with the Same Employee as the RO and HLR. Only NG employees whose immediate supervisor is TAG or CG may have TAG or CG listed as the RO and the HLR. No other exceptions are authorized.

ENCLOSURE D

ADDRESSING UNACCEPTABLE PERFORMANCE

1. Addressing Unacceptable Performance. ROs and HLR should address unacceptable performance early IAW section 3.9 of reference e. Unacceptable performance, not due to conduct, must be addressed with a PIP to demonstrate successful performance.
2. Performance as it Relates to Conduct. Performance processes and actions taken by a supervisor must be directly related to the elements and standards in the approved performance plan. Actions and processes not related to the approved performance plan or elements and standards must be processed IAW references g, h, or any other appropriate authoritative guidance.
3. Unacceptable Performance by Individuals Not Meeting the Definition of “Employee” IAW reference j. Generally, individuals who are not employees as defined in reference j, will not be issued a PIP. These individuals who fail to demonstrate fitness for continued government service should be removed IAW references h and i. This category of individuals have formerly been known as “trial period” or “probationary period” employees.
4. Performance Improvement Period to Demonstrate Successful Performance. A PIP must be established IAW section 3.9 of reference e. Below is a list of requirements in addition to those in reference e. This volume contains a sample PIP found in Figure 1 of Appendix A to Enclosure D.
 - a. Informal periods prior to written PIPs are not necessary and are strongly discouraged.
 - b. PIPs are generally no longer than 30 days, unless a justification can be provided for an extended period of time.
 - c. PIPs may be issued anytime during an appraisal period, but once issued to an employee, the employee must be allowed to complete the PIP prior to accomplishment of a rating of record. If it becomes necessary to issue a PIP within the 30 days prior to the end of the regular appraisal period, the appraisal period should be extended to accommodate the PIP.
 - d. Reconsideration requests must be approved or denied prior to the determination of successful performance or failure to demonstrate successful performance.
5. Unacceptable Ratings of Record. An RO must issue a PIP to an employee when issuing an unacceptable rating of record. An RO who rates an employee as unacceptable will change the effective date of the appraisal period to the later of, the date the appraisal is approved or the end date of the appraisal period, whichever is later.
6. NG Employees Who Improve After Unacceptable Ratings of Record. ROs should issue an out-of-cycle rating of record when the completion of the PIP shows performance has improved to an acceptable level.
 - a. The end date and effective date of the appraisal period should be changed to the date the appraisal is approved.

b. Employees who improve may have more than one appraisal in an appraisal period, but the appraisal periods will not overlap.

c. The start date of an appraisal period following the new acceptable rating should be the first day the employee is in a duty status after the previous appraisal period end date.

d. Employees who successfully complete a PIP will be issued a memorandum confirming the successful determination and informing them that, if the employee returns to unacceptable performance in the same critical elements addressed in the PIP within one year of the original issuance, action may be taken to remove or change the employee to lower grade without initiating another PIP. Actions taken for performance after that year will require the issuance of a new PIP.

7. NG Employees Who Fail To Demonstrate Successful Performance at the End of a PIP. An employee whose performance does not improve to an acceptable level is subject to personnel actions IAW Enclosure E.

APPENDIX A TO ENCLOSURE D
PERFORMANCE IMPROVEMENT PERIOD MEMO

1. Performance Improvement Period (PIP). A PIP is a formal period of time provided to an employee who has been identified as not performing successfully in one or more critical elements of an approved performance plan.
2. PIP Memo. A PIP memo is used to notify the employee of their failure to perform successfully and provide them with clear guidance that allows them the opportunity to demonstrate successful performance in those critical elements. The use of a PIP is at the discretion of the supervisor who also has the right to address failures of performance through standard disciplinary or adverse action procedures in accordance with reference h.

MEMORANDUM FOR [EMPLOYEE NAME, PAY PLAN SERIES AND GRADE, AND DUTY POSITION TITLE]

Subject: Performance Improvement Period

Reference: CNGB Instruction 1400.25 Vol. 431, National Guard Technician and Civilian Personnel Performance Management and Appraisal Program

1. The purpose of this Performance Improvement Plan (PIP) is the notification of critical deficiencies in the performance of your duties as a [Position Title, Pay Plan-Occupational Series, Grade]. A demonstration of successful performance is necessary in the following critical elements in order to assure your continued employment. You have until [Date normally no more than thirty days from issuance of PIP] to demonstrate successful performance. Specific elements of less than successful performance are:

a. Critical Element 1 -- [Critical Element Title].

(1) This Critical Element requires [enter critical element and standard]. [Enter information as to the overall reason the employee failed to meet the standard on this critical element]. Additional examples of less than fully successful performance in this Critical Element are as follows:

(2) [List additional specific instances of failure and counseling].

b. Critical Element 3 -- [List any additional critical elements the employee failed to meet the standard.]

(1) [Follow the same format in paragraphs a. (1) and (2).] Specific instances of less than fully successful performance in this Critical Element are as follows:

Figure 1. Sample Performance Improvement Period Memorandum

(2) [List additional specific instances of failure and counseling.]

c. Critical Element 4 -- [List any additional critical elements the employee failed to meet the standard]

(1) [Follow the same format in paragraphs a. (1) and (2).] Specific instances of less than fully successful performance in this Critical Element are as follows:

(2) [List additional specific instances of failure and counseling.]

2. Successful completion of this PIP will be shown by demonstrating the following:

a. Critical Element 1 -- [Critical Element Title] [Detail what actions the employee needs to take to become successful or describe the fully-successful standard clearly including dates and courses, if applicable] If you have any questions or would like to request appropriate assistance, we can discuss that upon your acceptance of this PIP.

b. Critical Element 3 -- [Critical Element Title] [Detail what actions the employee needs to take to become successful or describe the fully-successful standard clearly including dates and courses, if applicable] If you have any questions or would like to request appropriate assistance, we can discuss that upon your acceptance of this PIP.

c. Critical Element 4 -- [Critical Element Title] [Detail what actions the employee needs to take to become successful or describe the fully-successful standard clearly including dates and courses, if applicable.] If you have any questions or would like to request appropriate assistance, we can discuss that upon your acceptance of this PIP.

3. I will be available to discuss your performance as you strive for improvement and provide you with any reasonable training to assist you in becoming successful. During this PIP, we will meet [give a regular time or day] to discuss your progress and any problems you may be having in meeting your goals.

4. I will notify you in writing at the end of the PIP of the results. If you demonstrate fully successful performance in these critical elements, that will be considered successful completion of this PIP and the notification of successful completion will be filed in your electronic Official Personnel File. If your performance then remains fully successful, or higher, during the year after you receive your satisfactory performance notification, the notification will be removed.

Figure 1. continued. Sample Performance Improvement Period Memorandum

5. If you are unable to demonstrate fully successful performance in these critical elements, or if you do show fully successful performance but then return to less than fully successful performance within the one year from the date indicated in paragraph 1, I will propose one of the following:

a. If a position is available that you can be reasonably expected to perform successfully in at, or below your current grade I will propose that you be moved to that position.

b. If no such position is reasonably available, I will propose that your employment be terminated.

6. The point of contact for information regarding this process is [Full Name of HR Specialist for Performance Management], [Phone] or [Email]. This individual is not your representative and can only provide procedural information.

[Signature Block]
Rating Official

Employee Acknowledgement Signature:

Higher Level Reviewer Acknowledgement Signature:

Figure 1. continued. Sample Performance Improvement Period Memorandum

ENCLOSURE E

PERSONNEL ACTIONS BASED ON FAILURE TO DEMONSTRATE ACCEPTABLE LEVEL OF PERFORMANCE UPON COMPLETION OF A PERFORMANCE IMPROVEMENT PERIOD

1. Applicability of Enclosure E. Personnel actions taken under this enclosure must be taken for performance reasons. Actions taken for performance reasons must reflect a failure to perform critical elements of an approved performance plan as outlined in that plan. Personnel actions due to conduct should be taken IAW reference h. Where management feels it is more efficient to take a personnel action for performance under the procedures in reference h rather than this volume, that is management's right but it must be understood that an action taken under reference h is subject to the full due process and evidence standard of that reference.
2. Efficiency of the Service. In general, employees who fail to satisfactorily complete an established PIP will not be allowed to remain in the position of unacceptable performance. It is not in the efficiency of the service to allow employees to remain in positions that they have shown an inability to successfully perform. In general, the only reasonable actions to be taken would be; reassignment to a like grade position in which the employee can be reasonably expected to perform successfully; change to lower grade to a position in which the employee can be reasonably expected to perform successfully; or removal. Sample memorandums can be found in Appendices A and B to this Enclosure.
3. Reassignment. In actions taken based on unacceptable performance, as for any other reasons, the agency reserves the right to reassign an employee to a position of like grade and pay when the agency can show that the reassignment is for the efficiency of the service. Reassignments will be accomplished in accordance with reference g. If an employee is reassigned due to a failed PIP, they will be provided an opportunity to show successful performance in the new position and to have their performance re-evaluated after being under the new performance plan for a minimum of 90 calendar days. If the employee shows successful performance, a rating of record will be issued at that time.
4. Change to Lower Grade or Removal. Employees facing change to lower grade or removal have a right to due process procedures IAW references h, j, and k. Management reserves the right to utilize either references h and j, or the following procedures which are modeled IAW reference l.
5. Due Process Procedures for Adverse Actions Taken for Unacceptable Performance. Management will ensure the following procedures are followed, at a minimum, to ensure the employee receives appropriate due process when facing a change to lower grade or removal.
 - a. Notice of Proposed Action. Upon failure to successfully complete a PIP, if management chooses to remove or change the employee to a lower grade, management will issue the employee a notice of proposed action. That notice of proposed action must include, but is not limited to:
 - (1) Proposed Nature of Action. The proposed nature of action (change to lower grade or removal for failure to perform at a fully successful level).

(2) Failed Performance. Reference to the documentation in the failed performance improvement period.

(3) The Right to Reply an Official Higher in the Supervisory Chain Than the Proposing Official. The notice must include the higher official's contact information including email and telephone number and direction that the employee is allowed to reply orally, in writing or both. Additionally, a suspense for this reply must be provided that is not less than 5 days from the issuance of the notice.

(4) The Right of the Employee to Appropriate Representation. Bargaining unit employees may choose appropriate union representation IAW local collective bargaining agreements, if applicable. Employees have the right to a representative of their choice as long as that choice does not constitute conflict of interest or position, or include an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(5) Potential Rights to Appeal if the Action is Sustained. This would include, but is not be limited to, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or a negotiated or administrative grievance procedure, if applicable.

(6) Advance Notice Period. The notice will provide a proposed effective date of the action which will be 30 days after the issuance of the proposal. Advance notice may be extended up to an additional 30 days under policies and procedures developed IAW Enclosure B. Extensions beyond 30 days will only be made for the following reasons:

- (a) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed change to lower grade or removal;
- (b) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;
- (c) To consider the employee's answer, if an extension to the period for an answer has been granted (for example, because of the employee's illness or incapacitation);
- (d) To consider reasonable accommodation of a handicapping condition;
- (e) If State procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or
- (f) To comply with a stay ordered by a member of the Merit Systems Protection Board IAW reference m or another body of appropriate jurisdiction.

(7) Consideration of Medical Conditions. The State will allow an employee who wishes to raise a medical condition, which may have contributed to his or her unacceptable performance to furnish medical documentation, as defined in reference n, of the condition for the agency's consideration.

b. Final Agency Decision. For performance based adverse actions, the official providing the final agency decision must be higher in the supervisory chain than the proposing official, unless the proposing official is TAG or CG. Upon issuance of the proposed action memorandum, all documents relied upon for the proposed action will be forwarded to the individual identified to make the final agency decision. For these procedures, the decision on a proposed action must be made by the deciding official. For the purposes of this enclosure, the deciding official is TAG, the CG, or a designee. Decisions must be made no later than 30 days after the expiration of the advance notice period. Once the deciding official receives the employee's reply, the deciding official considers and answers all aspects of that reply. Deciding officials issue the final agency decision based only on the documents included in the proposed action and the employee's reply received on or before the time the action will be effective. The final agency decision will specify the instance(s) of unacceptable performance by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights, including information on how to proceed with those grievances or appeals.

APPENDIX A TO ENCLOSURE E

PROPOSED ACTION MEMORANDUM

1. Proposing Official. The Proposing Official, normally the RO, issues a proposed action memorandum when an employee fails a PIP.
2. Proposed Action Memorandum. The proposed action memorandum outlines the proposing officials' personnel action recommended, names the deciding official, notifies the employee of the appeal or grievance options, representative options, reply periods, and points of contact. Figure 2 may be used as a sample to ensure the proposed action meets all the minimum requirements.

| |
|---|
| [DATE] |
| MEMORANDUM FOR [EMPLOYEE NAME, PAY PLAN SERIES AND GRADE, AND DUTY POSITION TITLE] |
| Subject: Proposed [Change to Lower Grade or Removal] for Failure to Demonstrate Successful Performance Upon Completion of a Performance Improvement Period |
| Reference: CNGB Instruction 1400.25 Vol 431, National Guard Technician and Civilian Personnel Performance Management and Appraisal Program, [DATE] |
| 1. I propose to [change to lower grade/remove] you from your current position based on a failure to demonstrate successful performance upon completion of your Performance Improvement Plan (PIP), which concluded on [DATE]. [If a change to lower grade is proposed, include the pay plan, series and grade and duty position title of the position being changed to lower grade to]. All documents of the failed PIP used to propose this action have been provided to you by [name of official completing PIP] on [DATE]. However, to ensure that you have all documentation I have relied upon, you will see that information in the enclosure(s). |
| 2. [Name of official who will make final agency decision] will make the final agency decision regarding this proposed action. |
| 3. You have until [date no less than 5 days after issuance of proposal] to provide any testimony (oral or written), documents, or medical documentation you feel should be considered when making the final decision. Unless extended, this action, if sustained, will take place on [30 days after issuance of proposed action]. |

Figure 2. Proposed Action Memorandum

4. You may designate a representative of your choice if that choice does not constitute a conflict of interest or position. If your representative is also an employee of [State], we reserve the right to disallow that representative based on a bona-fide agency need to not release the individual for the time needed to represent you. [If the individual is a bargaining unit employee, also include information on union representation]. If you wish to have us communicate directly with your representative, you must provide us a written statement designating such representation, including full contact information.

5. If this action is sustained, you may have a right to appeal or grieve this action through [include as appropriate: Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, or Administrative Grievance Procedure as appropriate]. If the action is sustained, the decision notification will include procedures for accessing and or filing such appeal or grievance.

6. If you feel you need more time to provide a reply or if an extension of the notice period is necessary and in accordance with paragraph 4a(6) of the reference, you may request such extension by making a request directly to the individual named in paragraph 2 above. Such extension may be granted or denied or partially granted based on the content of the request. An extension may also be made directly at the option of the individual named in paragraph 2 if circumstances warrant. If an extension is granted or denied, you will be provided with written notice of extension or denial.

7. [State may include additional applicable State information in accordance with local policy or bargaining agreements.]

8. The point of contact for information regarding this process is [Full Name of HR Specialist for Performance Management], [Phone] or [Email]. This individual is not your representative and can only provide procedural information.

[Signature Block]
Proposing Official

Attachment(s):
As stated

Figure 2. continued. Proposed Action Memorandum

APPENDIX B TO ENCLOSURE E

FINAL AGENCY DECISION

1. Deciding Official. The deciding official considers all information and comes to a decision upon receipt of the proposed action documentation and after receiving all reply information from the employee, if applicable.
2. Final Agency Decision Memorandum. The deciding official may only sustain the proposed penalty, non-sustain the proposed penalty, or reduce the penalty detailed on the proposed action memorandum. In general, if sustained, the only reasonable actions are removal, change to lower grade or reassignment. Figure 3 may be used as a sample to ensure the final agency decision meets all the minimum requirements.

| |
|---|
| [DATE] |
| MEMORANDUM FOR [EMPLOYEE NAME, PAY PLAN SERIES AND GRADE, AND DUTY POSITION TITLE] |
| Subject: Final Agency Decision on [Change to Lower Grade or Removal] for Failure to Demonstrate Successful Performance Upon Completion of a Performance Improvement Period |
| References: (a) CNGB Instruction 1400.25 Vol 431, National Guard Technician and Civilian Personnel Performance Management and Appraisal Program, [DATE] (b) Merit Systems Protection Board website, < https://www.mspb.gov/ www.mspb.gov > , accessed [provide Day Month Year last accessed] (c) Title 5 United States Code, Section 2302, "Prohibited Personnel Practices" (d) DoD Instruction 1400.25 Vol 771 , 26 December, 2013, "Administrative Grievance System," Incorporating Change 1, 13 June 2018 |
| 1. I am in receipt of a proposed action for failure to demonstrate successful performance upon completion of a Performance Improvement Plan (PIP) issued to you on [date] by [proposing official]. |
| 2. In your reply, you raised the following concerns: [If the employee provided no reply or additional information, state that fact here.] a. You stated that there is an open position at a lower grade to your current position which you have performed successfully in the past. [Answer this and any other statements/claims below clearly showing how the claim was considered and whether that consideration had an effect on the final agency decision.] |

Figure 3. Final Agency Decision Memorandum

- b. You claimed that your supervisor was “out to get you”. [See above.]
- c. Add any additional claims here and below along with consideration language.]

3. Based on all the aforementioned information, I have decided to [sustain/non-sustain/reduce the penalty]. [If the decision is to reduce the penalty, the position information the employee will be change to lower grade to or reassigned to must be provided] If the decision is to non-sustain, that must be stated here along with information on the disposition of any documents leading to the proposed action.

4. [The State should choose to either directly provide appeal information within the memo or provide that information as an enclosure(s). If the State chooses to provide the information in enclosures, this paragraph would simply direct the employee to those enclosures. In either case, the following is the information that must be provided.]

As this action is a [change to lower grade/removal] you have the right to file an appeal or grievance according to:

- a. Merit Systems Protection Board [if change to lower grade or removal]. [Provide full information on how and where to file that appeal and any applicable time limits to filing such appeal. Information on this information can be found at reference b.
- b. Office of Special Counsel. If you feel this action is a result of a prohibited personnel practice as described reference c, you may file and appeal with the Office of Special Counsel. [More information on this can be found at www.osc.gov.] [Provide information on how to file such an appeal.]
- c. Equal Employment Opportunity Commission. If you feel this action is for unlawful discriminatory reasons, you may file and appeal with the Equal Employment Opportunity Commission. [Provide information on how to file such an appeal.]
- d. Administrative. [Provide the established administrative grievance procedure in accordance with reference d, provide information on how to file in accordance with that policy.]

Figure 3. continued. Final Agency Decision Memorandum

5. Effective date of the personnel action to be taken. This effective date can be no earlier than 30 days from the date of the proposed action.

6. The point of contact for information regarding this process is [Full Name of HR Specialist for Performance Management], [Phone] or [Email]. This individual is not your representative and can only provide procedural information.

[Signature Block]
Deciding Official

Attachments:

A – Proposed action Packet

B – Documentation of employee reply, if any

Figure 3. continued. Final Agency Decision Memorandum

ENCLOSURE F

REQUESTS FOR RECONSIDERATION

1. Reconsiderations. Reconsiderations are actions taken when an employee, RO, HLR, or any other individual acting on their behalf in an official capacity; request to review the rating of record assigned by a RO. Reconsideration can be through a formal process identified by the State generally within an administrative grievance procedure.
2. Reconsideration Approval Authority. Reconsiderations are approved by the individual delegated authority to approve personnel actions for the State. All TAGs and the CG have personnel action authority delegated by the Chief of the National Guard Bureau IAW reference o. TAGs and the CG may choose to delegate this authority.
3. What Reconsiderations May Do. A reconsideration can:
 - a. Change the rating for one or more critical elements.
 - b. Replace the rating of one or more critical elements to not rated, as long as two critical elements being rated remain.
 - c. Remove an appraisal to be completed again by the RO. This will reset the status of an appraisal and erase the employee and rating official assessments on the appraisal.
 - d. Remove or change content of an assessment or critical element that is discriminatory, unlawful, or directed for removal by a bona fide settlement or decision.
 - e. Remove a rating of record to allow completion of a progress review for an approved plan.
 - f. Change the content of an assessment when the rating of record and the corresponding critical element is also changed. Typically, this is changed to substantiate a higher or lower rating for the element concerned.
4. What A Reconsideration Cannot Do. A reconsideration cannot:
 - a. Change an average rating of record that is inconsistent with the individual critical elements averaged rating. Requests for changes to the average rating must show which critical element ratings changed to substantiate the overall average change.
 - b. Effect a change to a critical element solely due to a request of the employee. Management has the right to assign work. Critical elements are a representation of work assigned to an employee that are critical for successful performance of the position. Employees are not required to agree to the duties assigned, but are requested to acknowledge. An employee has the right to refuse to acknowledge, but the assignment of work and approval of the performance plan continues.
 - c. Change the content of a critical element or standard due to grammatical error, employee disagreement with the assigned duties or assessment; or any other reason that does not affect the rating; except when the change meets the conditions of paragraph 3.f. of this enclosure.

5. Requirements for Reconsiderations. HROs are responsible for developing State policy on reconsiderations. Inclusion in administrative grievance procedures is an acceptable policy if they meet the requirements in this volume. HROs must at a minimum require the following items in their State policy.

- a. Requests for reconsideration must be made in writing.
- b. The employee must be offered the opportunity to review any change to an approved rating of record and an opportunity to respond before a reconsideration is approved.
- c. The requesting party must be afforded a fair and non-discriminatory process where evidence can be presented or summarized to the approving official to substantiate the change.
- d. Approvals of reconsiderations are made in memorandum format IAW Appendix A to Enclosure F and signed by the approving official. The employee, RO, and HLR acknowledge the receipt only. Acknowledgement does not concede agreement. Digital signatures are acceptable. Any party's refusal to acknowledge is noted on the memorandum.
- e. Denials of reconsideration must be communicated to the requesting party in writing.
- f. Reconsideration records must be maintained by the State for four years after the case is closed or final.
- g. Former Department of Defense Forms 2906, "DoD Performance Plan and Appraisal" are removed from the employee performance record for approved reconsiderations.
- h. States may set policy concerning the number of days a requesting party has to submit a reconsideration request after a rating of record is final, but reconsiderations should be denied for any request later than four years after the effective date of the rating of record.

APPENDIX A TO ENCLOSURE F

RECONSIDERATION APPROVAL MEMORANDUM

1. Approving Official. The approving official provides a copy of the reconsideration approval memorandum to the employee or their representative, RO, HLR, and the individual assigned super-user access for the performance management system for the jurisdiction concerned.
2. Reconsideration Approval Memorandum. The memorandum will be used to effect change in the Department of Defense Form 2906, "DoD Performance Plan and Appraisal". Figure 4 provides a sample memorandum with the minimum required information.

| |
|---|
| [DATE] |
| MEMORANDUM FOR NATIONAL GUARD TECHNICIAN AND CIVILIAN PERSONNEL POLICY DIVISION |
| Subject: Reconsideration to Performance Document for [Full Name of Employee], [State] |
| Reference: 5 CFR 430.208(i), Rating Performance |
| 1. The update to the National Guard Employee's performance documents due to (Choose only one) [an informal request of the employee within 60 days of higher level reviewer approval of the appraisal] [a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding] OR [the State determined that a rating of record was incorrectly recorded or calculated] as allowed in reference a, is approved. Below is the information required to make the change in the personnel system. a. Appraisal Effective Date: b. Appraisal Period Start Date: c. Appraisal Period End Date: d. Appraisal ID #: e. Plan Status and Current Status: f. The [insert document type and title of field needing updated (that is, Appraisal, critical element rating number 1)] is changed or corrected to [enter update here] [include multiple updates if applicable]. |
| 2. The employee was provided due process, if applicable, prior to this request. |

Figure 4. Reconsideration Approval Memorandum

3. The point of contact is [Full Name of HR Specialist for Performance Management], [Phone] or [Email].

[Signature Block]
TAG, CG, or Delegated Authority for
Personnel Actions
NOTE: Delegates must have delegation
authority memorandum attached

Employee Acknowledgement Signature:

Rating Official Acknowledgement Signature:

Higher Level Reviewer Acknowledgement Signature:

Figure 4. continued. Reconsideration Approval Memorandum

ENCLOSURE G

WITHIN-GRADE INCREASE ELIGIBILITY

1. Within-Grade Increase Eligibility. An employee receives within-grade increased based on an acceptable level of competence determinations and the prescribed waiting period for the next step. A General Schedule employee who receives a rating of record of 3 or higher for the most recently completed appraisal period is considered at an acceptable level of competence and is eligible for a within grade increase. A Federal Wage System employee whose most recent rating of record is 3 or higher is considered at an acceptable level of competence and is eligible for a within grade increase.
2. Within-Grade Increase Denial. An employee whose performance is less than fully acceptable (rating of 1) must be denied a within-grade increase. Denial of within-grade increases for employees for any reason, other than less than fully successful performance, is prohibited. An RO should consult the State's Employee Relations Specialist prior to denying a within-grade increase.
3. Delaying a Determination for a Within-Grade Increase. An RO may delay the determination of a within-grade increase for two reasons; due to the employee not performing under an approved plan for the minimum period who has yet to receive a rating of record or the employee was reduced in grade due to unacceptable performance and is eligible for a within-grade increase during the minimum period of performance.
4. Waiving the Requirement for a Rating of Record to Receive a Within-Grade Increase. The requirement to have a rating of record to receive a within-grade increase is waived when the employee has not served a minimum of 90 calendar days under an approved plan and one or more of the following conditions exist.
 - a. The employee is in a non-pay status due to workers compensation or military duty or restores to their position under reference p.
 - b. The employee is in long term training.
 - c. The employee is detailed to another agency.
 - d. The employee had insufficient time to demonstrate successful performance due to authorized activities not subject to appraisal, such as labor management activities.
5. Ratings of Record for the Purpose of Within-Grade Increase Denial. When an employee's current performance is not consistent with the employee's most recent rating of record that affords a within-grade increase, a more current rating of record must be prepared. The new rating of record must still meet the minimum requirements established for performance plans, progress reviews, and appraisals established in reference e.
6. Notice to the Employee for Within-Grade Increase Denial. An RO must notify the employee of the denial of the within-grade increase in writing. The notice must be provided to the employee at least 15 calendar days in advance of the effective date of the expected within grade increase. Notice requirements are listed in Appendix A to this Enclosure.

7. Effective Date of Within-Grade Increases. Within-grade increases are effective the first day of the first pay period following the completion of a waiting period when an employee has an acceptable level of competence determination. Within-grade increases for employee's whose within-grade increase was delayed, are effective retroactively back to the date they would have been effective if not delayed. Employees whose within-grade increases were denied, receive their step increase the first day of the first pay period following rating of record of 3 or higher.

APPENDIX A TO ENCLOSURE G

SAMPLE WITHIN-GRADE INCREASE DENIAL

1. Within-Grade Increase Denial. A within-grade increase denial notice must state the within-grade increase is denied due to less than fully successful performance, attach the Performance Improvement Period Memorandum found in Appendix A to Enclosure D, and enclose or reference the State's reconsideration policy.
2. The below example may be used to create a denial notice.

MEMORANDUM FOR [Full Name of Employee]

Subject: Notification of Within-Grade Increase Denial

1. This is to notify you that your within-grade increase which is due DD MMM YYYY is denied because your performance is below the fully acceptable level. Your attached appraisal, effective DD MMM YYYY, had an average rating of record of less than fully successful and you were issued the attached performance improvement plan (PIP). You may request a reconsideration of your appraisal in accordance with the attached policy.
2. Your performance must be rated at the fully acceptable level in all critical elements to receive a within-grade increase. Specifically the critical elements identified in PIP must improve to fully successful and all other critical elements must remain at minimum fully successful. If you successfully complete your PIP, you will be rated and your within-grade increase will process on the first day of the following pay period of the fully successful appraisal effective date.
3. Questions concerning this notification may be directed to [Full Name of HR Specialist for Performance Management or Compensation], [Phone], and [Email].

Signature Block
[Supervisor]

Attachments:
As stated

Acknowledgement of Receipt:

Employee _____ Date _____

Figure 5. Sample Within-Grade Increase Denial

ENCLOSURE H

REFERENCES

- a. Chief of the National Guard Bureau (CNGB) Instruction 1400.25A, 11 May 2020, "National Guard Technician and Civilian Personnel Program"
- b. Title 32 United States Code (U.S.C.), Section 709, "Technicians: Employment, Use, Status"
- c. 10 U.S.C. § 10508, "National Guard Bureau: General Provisions"
- d. Department of Defense (DoD) Directive 5105.77, 30 October 2015, "National Guard Bureau (NGB)," Incorporating Change 1, 10 October 2017
- e. DoD Instruction 1400.25 Vol 431, 04 February, 2016, "DoD Civilian Personnel Management System: Performance Management and Appraisal," Incorporating Change 2, 1 July 2020
- f. Title 5 Code of Federal Regulations (CFR) Part 430, Performance Management
- g. CNGB Instruction 1400.25 Volume 715, 15 September 2021, "National Guard Technician and Civilian Personnel Voluntary and Non-Disciplinary Actions Program"
- h. CNGB Instruction 1400.25 Volume 752, 08 November 2021, "National Guard Technician and Civilian Personnel Discipline and Adverse Actions Program"
- i. 5 CFR Part 752, "Adverse Actions"
- j. 5 U.S.C., Chapter 75, "Adverse Actions"
- k. 5 U.S.C., Chapter 43, Performance Management
- l. 5 CFR Part 432 "Performance Based Reduction in Grade and Removal Actions"
- m. 5 U.S.C., § 1204, "Powers and Functions of the Merit Systems Protection Board"
- n. 5 CFR Part 339.102, Purpose and Effect
- o. CNGB Memorandum, 16 February 2017, "Delegation of Authority to Employ, Appoint, and Administer National Guard Employees", Available upon request from NGB-J1-TCP
- p. 5 CFR Part 353, "Restoration To Duty From Uniformed Service Or Compensable Injury"

GLOSSARY

PART I. ACRONYMS

| | |
|------------|---|
| Absent-US | Absent-Uniformed Service |
| CFR | Code of Federal Regulations |
| CG | Commanding General of the District of Columbia |
| CNGB | Chief of the National Guard Bureau |
| DoD | Department of Defense |
| HLR | Higher Level Reviewer |
| HR | Human Resources |
| HRO | Human Resource Officer |
| IAW | In accordance with |
| NG | National Guard |
| NGB | National Guard Bureau |
| NGB-J1 | Manpower and Personnel Directorate |
| NGB-J1-TCP | Technician and Civilian Personnel Policy Division |
| PIP | Performance Improvement Period |
| RO | Rating Official |
| TAG | The Adjutant General |

PART II. DEFINITIONS

Acceptable Level of Competence -- Performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position.

Higher Level Reviewer -- A senior-level management official above the level of the rating official.

Performance Improvement Period -- A memorandum and a period of time that provides an opportunity for an employee to demonstrate acceptable performance after a supervisor determines that employee performance was unsuccessful.

Rating Official -- The supervisor responsible for informing the employee of the duties of the position, establishing performance standards, providing feedback, appraising performance, and assigning the performance rating. Normally this employee is the immediate supervisor of the rated employee.

Supervisor -- An individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, remove, or rate employees, to adjust their grievances, or to effectively recommend such action.